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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOHN D., FAITH D., TITO U. and
NIKITA U., Minors.

TRISHA U.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES et al.,

Real Parties in Interest.

B178094

(Super. Ct. No. CK52348)

ORIGINAL PROCEEDING; petition for writ of mandate. Margaret Henry,
Judge. Petition denied.

Steven Klaif for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Larry Cory, Assistant County Counsel, Judith A.
Luby, Senior Deputy County Counsel, for Real Party in Interest Los Angeles County
Department of Children and Family Services.

Law Offices of Anne E. Fragasso, O. Raquel Ramirez and Jennifer Gitlin for Real
Parties in Interest John D., Faith D., Tito U. and Nikita U.

Petitioner Trisha U. seeks extraordinary writ review¹ of the juvenile court's order, made at the 12-month review hearing,² setting a hearing pursuant to section 366.26 to consider selection and implementation of a permanent plan for her four children, eight-year-old John D., five-year-old Faith D., two-year-old Tito U. and one-and-a-half-year-old Nikita U. Trisha U. contends the court should have extended reunification services for an additional three months. Trisha U.'s petition is opposed by the Department of Children and Family Services (Department) and also by the children, who have filed a joinder in the Department's brief in opposition to the petition. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On May 11, 2003, Trisha U. gave birth to Nikita, and both she and Nikita tested positive for marijuana and amphetamines. The following day Randy U., Trisha U.'s husband and the father of Tito and Nikita, also tested positive for amphetamines and marijuana.³ On May 19 Trisha U. and Randy U. entered into a voluntary family maintenance agreement with the Department, but both failed to comply, and when the social worker visited the family she found the home to be in a deplorable state and the children unkempt and unbathed. Trisha U. had a large bruise around her left eye, and John told the social worker Trisha U. and Randy U. often engaged in violent physical confrontations. On June 16, 2003 the Department filed a petition⁴ seeking to declare the children court dependents for the domestic violence and drug abuse, and the court ordered the children's detention.

¹ Welfare and Institutions Code section 366.26, subdivision (I); California Rules of Court, rule 39.1B. All further statutory references are to the Welfare and Institutions Code.

² Section 366.21, subdivision (f).

³ Randy U. is not a party in this proceeding.

⁴ Section 300.

In its report for the jurisdiction and disposition hearing,⁵ the Department indicated Trisha U. admitted she had smoked marijuana since age 14 and had used marijuana and methamphetamines together two weeks before Nikita's birth. The Department also reported that when the social worker arrived at Trisha U.'s home for an interview, Trisha U. was extremely nervous and hyperactive, would not calm down, began to cry for no apparent reason, and gave every appearance she was under the influence of amphetamines.

On July 21, 2003 Trisha U. entered a no contest plea to an amended petition alleging her history of drug use, her use of drugs during her pregnancy with Nikita, and the failure of the voluntary services agreement. The court sustained the petition, ordered the Department to provide reunification services for Trisha U., and ordered Trisha U. to participate in a parenting education program, a drug rehabilitation program with random testing, and individual counseling to address anger management and domestic violence. The matter was continued to January 13, 2004 for the six-month review hearing.⁶

The Department's report for the six-month review hearing stated Trisha U. had failed to participate in any aspect of her case plan. Trisha U. and Randy U. had been evicted from their apartment and had become homeless; they declined the social worker's offers of referrals for emergency shelter; and they engaged in a violent confrontation outside the foster care office on the day of a scheduled visit with the children in early September of 2003. Privately, Trisha U. told staff at the foster care agency she was leaving for Idaho because Randy U. was trying to kill her. In late September, Trisha U. and Randy U. appeared at the Department's office and were given \$150.00 in bus passes and coupons to enable them to comply with the case plan. Trisha U.'s right arm was in a cast, she was limping, had stitches on her arm and above her right eye, and attributed her injuries to a car accident. In early October, having failed to visit the children or attend any programs, Trisha U. and Randy U. told the social worker they were moving to Idaho

⁵ Sections 355, 358.

⁶ Section 366.21, subdivision (e).

for financial reasons, and requested a last visit with the children. The social worker made arrangements for the visit at the Department's office on October 1, but Trisha U. and Randy U. arrived late and the children had left. The visit was rescheduled for October 3, but Trisha U. and Randy U. did not appear. Upon arrival in Idaho, Trisha U. completed the intake process at a therapy center to which the Department had referred her, but she thereafter failed to attend any classes or programs. The Department recommended reunification services continue to the 12-month date.

On January 13, 2004 the court conducted the six-month review hearing as to John and Faith, determined Trisha U. was not in compliance with her case plan, and ordered reunification services continue to the 12-month review hearing,⁷ which the court set for July 13, 2004. With respect to Tito and Nikita, the court continued the six-month hearing to February 18 for a contest. The court ordered the Department to submit a supplemental report addressing Trisha U.'s and Randy U.'s participation in the court-ordered programs in Idaho, and the status of Interstate Compacts on the Placement of Children (ICPCs) which had been initiated in Idaho and Minnesota, where Trisha U. and Randy U. had relatives who had expressed interest in caring for the children.

In its supplemental report, the Department indicated the social worker had been unable to contact Trisha U. and Randy U. in Idaho because their telephone had been disconnected, but the Idaho counselors had reported their participation in programs had been inconsistent. As for the ICPCs, the Idaho relatives interested in the children were in the midst of a family crisis which precluded any placements, but the Minnesota agency would likely approve placement of Tito and Nikita with a paternal aunt and uncle, who might also later become able to accept placement of the two older children. The Department recommended termination of family reunification.

⁷ Section 366.26, subdivision (f).

On February 18 the court conducted the six-month review hearing as to John and Faith, found Trisha U. and Randy U. to be in partial compliance with their case plan, and continued reunification to the 12-month date. The court ordered the Department to prepare a progress report for a hearing on March 16, addressing the status of the Minnesota ICPC. In the report, the Department advised ICPC approval for placement of Tito and Nikita with the Minnesota relatives had been received, but placement of John and Faith with the relatives would not be possible. On March 16 the court ordered Tito and Nikita placed in Minnesota.

In its report for the 12-month review hearing, the Department stated the Minnesota relatives had indicated they wished to adopt Tito and Nikita. Randy U. had been arrested in Idaho in April for possession and discharge of a firearm by a convicted felon. Trisha U. had given birth to a new baby on July 1. Trisha U.'s therapist in Idaho had reported Trisha U. was participating in a drug rehabilitation program and had been testing clean, but the therapist doubted Trisha U. could handle the stress of caring for her other children. Trisha U. had not visited with the children since January. The Department recommended the court terminate reunification and set a hearing pursuant to section 366.26. On July 13 the 12-month review hearing was continued to August 23 for a contest.

The contested 12-month hearing commenced August 23 with Trisha U.'s testimony she had completed parenting and drug counseling programs in Idaho; had placed calls to John and Faith more than once a month; had not spoken with Tito and Nikita, but had a good relationship with their caregivers in Minnesota and was kept abreast of the children's development through frequent telephone conversations with the caregivers; had a support system of friends and relatives in Idaho, who assisted her in staying sober and would be available to help with child care; and was prepared to regain custody of her children. Trisha U. further testified she and Randy U. were still a couple,

her new baby was Randy U.'s baby, and Randy U. had recently been convicted of a felony (aggravated battery) and remained incarcerated. The hearing was continued to September 13 to permit the appearance of John and Faith, who had not been brought to court. Counsel for the Department offered to submit a supplemental report for the continued hearing.

In its supplemental report, the Department indicated Trisha U.'s therapist in Idaho had written to the social worker, stating Trisha U. was attending all her therapy appointments and had achieved her therapy goals. The therapist opined Trisha U. could care for her children. The social worker disagreed with this assessment, noting the therapist had been far less positive a month earlier, and was an addictions counselor and not a licensed mental health clinician.

Trisha U. was not present when the contested 12-month hearing resumed September 13. The foster mother of John and Faith testified she wished to become their legal guardian. The social worker testified the Minnesota relatives wished to adopt Tito and Nikita, and recommended reunification services be terminated. In support of this recommendation, the social worker noted Trisha U. had demonstrated she continued to have mental health issues by remaining in a relationship with Randy U., who had a pattern of violent behavior, and choosing to go with him to Idaho while leaving her children behind. The social worker further noted Trisha U. had no involvement in her children's lives, had made little contact with the children, and she had not visited, or written, or sent any gifts or cards to any of them. The social worker also testified that contrary to Trisha U.'s testimony, the children's caregivers had reported Trisha U. had rarely communicated with them.

The court heard argument in the matter on September 15. Counsel for the Department acknowledged Trisha U. had made significant progress in her programs,

while pointing out the Idaho therapist had testified she did not have drug test results for Trisha U.⁸ Counsel requested the court terminate reunification services, stressing the absence of any bond between Trisha U. and the children, and pointing out the caregivers had refuted Trisha U.'s assertions she had been consistently making telephone contact with them. The children's attorney also asked the court to terminate reunification services. Counsel stated Trisha U. and especially Randy U. had inflicted serious physical and emotional abuse on the children, by moving to Idaho and losing touch with the children Trisha U. was in effect choosing Randy U. over them, and none of the four children missed Trisha U. or expressed a wish to live with her. Counsel for Trisha U. argued it was clear she had received a "wake-up call," and requested reunification services be extended an additional three months.

After hearing argument, the court found Trisha U. had made partial but insufficient progress in her case plan, return of the children to her care would create a substantial risk of detriment to their well-being, and there was not a substantial probability the children could be returned to her care by the 18-month date. In making its findings, the court stated Trisha U.'s testimony to the effect she had made frequent contact with the children or their caregivers was not credible. The court also pointed out that by choosing to move to Idaho, Trisha U. created a situation in which she could not establish any bonded relationship with her children, and although she had made progress in dealing with her substance abuse problems, her children remained strangers to her. In the court's words, "I would not trust her at this point with her children. To send four kids to her now or in three months [would be] like putting four strange children on top of a baby she already has . . . I would put it out two years before there could be reunification . . . [The children] are entitled to permanency." The court proceeded to terminate reunification and set a hearing pursuant to section 366.26.

⁸ Apparently, the therapist's testimony was taken September 14. The record confirms trial proceedings were conducted that day, but the record does not include a transcript of the proceedings.

DISCUSSION

We reject Trisha U.'s contention reunification services should have been extended to the 18-month date. Under the law, family reunification services for Trisha U. were limited to a period of 12 months from the date the children entered foster care,⁹ unless the court found either there was a substantial probability the children may be returned to her by the 18-month date or reasonable services had not been provided by the Department.¹⁰ Trisha U. does not challenge the adequacy of the Department's services, and the record contains ample evidence to support the court's finding there was not a substantial probability the children could be returned to her by the 18-month date. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) By the time of the 12-month hearing on September 15, the 18-month statutory limit was less than four months away.¹¹ The record fully supports the court's determination the children could not safely be returned to Trisha U.'s care within an additional three or four months. Principally, by moving to Idaho with Randy U., Trisha U. relinquished the opportunity to establish a bonded relationship with the children after her departure from California. She had no visits with the children, failed to communicate with them, and as a result the children became strangers to her. Additionally, the record shows that during the entire reunification period Trisha U. placed her relationship with Randy U., who continued a pattern of violent behavior, over her obligations to her children. Under these circumstances, the record does not contain evidence to show Trisha U. could make the necessary changes within a few months to become able to care for the children.

⁹ Section 361.5, subdivision (a)(3).

¹⁰ Section 366.21, subdivision (g)(1).

¹¹ The date a child entered foster care is calculated from the date of the jurisdictional hearing or the date 60 days following the child's initial detention, whichever is earlier. (§ 361.5, subd. (a)(3).) In this case, the children officially entered foster care on July 21, 2003, the date of the jurisdictional hearing.

DISPOSITION

Because substantial evidence supports the juvenile court's order to conduct a hearing pursuant to section 366.26, the petition is denied on the merits.

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JOHNSON, Acting P.J.

We concur:

WOODS, J.

ZELON, J.